

HOUSE No. 1289

By Mr. Toomey of Cambridge, petition of Timothy J. Toomey, Jr., and Elizabeth A. Malia relative to adopting protections for low and moderate income tenants and units of governmentally involved housing. Housing.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT AUTHORIZING LOCALITIES TO ADOPT PROTECTIONS FOR LOW AND MODERATE INCOME TENANTS AND UNITS OF GOVERNMENTALLY INVOLVED HOUSING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. The following words or phrases as used in this act
- 2 shall have the following meaning:—
- 3 (A) “governmentally-involved housing,” means any residential
- 4 housing project constructed, rehabilitated, or assisted pursuant to
- 5 any one or more of the following governmental programs:
- 6 (1) section 202 of the Housing Act of 1959, 12 U.S.C. section
- 7 1701q;
- 8 (2) the Below Market Interest Rate Program under section
- 9 221(d)(3) of the National Housing Act, 12 U.S.C. section 1715l
- 10 (d)(3) or (5);
- 11 (3) section 221(d)(4) of the National Housing Act, 12 U.S.C.
- 12 section 1715l (d)(4) to the extent the project’s rents are regulated by
- 13 the U.S. Department of Housing and Urban Development pursuant
- 14 to a regulatory agreement;
- 15 (4) section 236 of the National Housing Act, 12 U.S.C. section
- 16 1715z-1;
- 17 (5) any project-based program for low-income persons under
- 18 section 8 of the United States Housing Act of 1937, 42 U.S.C.
- 19 section 1437f;
- 20 (6) the Rent Supplement Program under section 101 of the
- 21 Housing and Urban Development Act of 1965, 12 U.S.C. section
- 22 1701s;

23 (7) the U.S. Department of Agriculture's Rural Rental Housing
24 Program under section 515 of the Housing Act of 1949, 42 U.S.C.
25 section 1485;

26 (8) the U.S. Department of Agriculture's Rural Rental Assistance
27 Program under section 521 of the Housing Act of 1949, 42 U.S.C.
28 section 1490a;

29 (9) the Urban Development Action Grant, hereinafter referred to
30 as UDAG, 42 U.S.C. section 5318, or the Housing Development
31 Action Grant, hereinafter referred to as HoDAG, 42 U.S.C. section
32 1437o, in either case to the extent the project's rents are restricted or
33 regulated pursuant to a grant agreement with the U.S. Department of
34 Housing and Urban Development or otherwise;

35 (10) the federal low-income housing tax credit program under
36 section 42 of the U.S. Internal Revenue Code, 26 U.S.C. section 42;

37 (11) chapter 121A of the General Laws to the extent the chapter
38 121A approvals restrict the affordability of the project's dwelling
39 units; or

40 (12) section 13A of chapter 708 of the Acts of 1966, as amended.

41 (B) "Formerly governmentally-involved housing," housing which
42 was governmentally-involved as of November 1, 2004, or which
43 becomes governmentally-involved housing after November 1, 2004,
44 but which is no longer governmentally-involved.

45 (C) "Low-income," an annual income which is eighty percent or
46 less of the median income for the area as determined by the United
47 States Department of Housing and Urban Development, with adjust-
48 ments for smaller and larger families.

1 SECTION 2. (A) Notwithstanding the provisions of any general
2 or special law to the contrary, including, without limitation, the pro-
3 visions of chapter 282 of the acts of 1994, a municipality accepting
4 the provisions of this act shall regulate the rent for use or occupancy
5 of governmentally-involved or formerly governmentally-involved
6 housing to the extent such regulation is not pre-empted by federal
7 law or by section 6 of chapter 708 of the acts of 1966, as amended,
8 once the basis for federal or Massachusetts Housing Finance Agency
9 rent preemption no longer exists.

10 (B) Said municipality shall establish as the maximum rent for
11 governmentally-involved and formerly governmentally-involved
12 housing accommodations the rent in effect therefor on November 1,

13 2004 or six months before the basis for federal or Massachusetts
14 Housing Finance Agency rent preemption lapsed, whichever is later,
15 adjusted to insure such rent provides a fair net operating income as
16 of the date of the loss of rent preemption.

1 SECTION 3. (A) A municipality accepting the provisions of this
2 act shall provide, by ordinance or by-law, that no person shall bring
3 an action to recover possession of a governmentally-involved or for-
4 merly governmentally-involved housing accommodation to the
5 extent that such regulation is not otherwise preempted by federal law
6 or section 6 of chapter 708 of the acts of 1966, unless:

7 (1) the tenant has failed to pay the rent to which the owner is enti-
8 tled;

9 (2) the tenant has violated an obligation or covenant of tenancy
10 not inconsistent with chapter ninety-three A of the General Laws or
11 this act other than the obligation to surrender possession upon proper
12 notice, and has failed to cure the violation after having received
13 written notice thereof;

14 (3) the tenant is causing, committing, or permitting a nuisance in,
15 or substantial damage to, the housing accommodation, or is creating
16 substantial interference with the comfort, safety, or enjoyment of the
17 owner or other occupants of the same or any adjacent accommoda-
18 tion;

19 (4) the tenant has used or permitted use of a housing accommoda-
20 tion for illegal purposes;

21 (5) the tenant, who had a written lease or rental agreement which
22 has terminated, has refused, after written requests or demand by the
23 owner, to execute a written extension or renewal thereof for a further
24 term of like duration on terms not inconsistent with or violative of
25 any provision of this act;

26 (6) the tenant has refused the owner reasonable access to the
27 housing accommodation for the purpose of making necessary repairs
28 or improvements required by law, or for the purpose of inspection as
29 permitted or required by the lease or by law, or for the purpose of
30 showing the housing accommodations to any prospective purchaser
31 or mortgagee;

32 (7) the tenant holding at the end of a lease term is a subtenant not
33 approved by the owner;

34 (8) the owner seeks to recover possession in good faith of a unit
35 for the owner's own use and occupancy or for use and occupancy by
36 the owner's spouse, children, grandchildren, great grandchildren,
37 parents, grandparents, brother, sister, father-in-law, mother-in-law,
38 son-in-law, or daughter-in-law; or

39 (9) the owner seeks to recover possession for any other just cause
40 not in conflict with the provisions and purposes of this act or chapter
41 ninety-three A of the General Laws.

42 (B) The provisions of this section shall be construed as additional
43 restrictions on the right to recover possession of such housing
44 accommodations.

1 SECTION 4. A municipality accepting the provisions of this act
2 shall provide, by ordinance or by-law, that no person shall remove
3 any governmentally-involved or formerly governmentally-involved
4 housing accommodation from low-income rental housing use,
5 without first obtaining permission for that purpose from the municipi-
6 pality or its designee, to the extent that such provision is not pre-
7 empted by federal law or section 6 of chapter 708 of the acts of
8 1966. Such permission may be subject to terms and conditions not
9 inconsistent with the purposes and provisions of this act, including,
10 without limitation, (a) incentives to continue in effect the low-
11 income use restrictions previously in place for the property and (b)
12 where sale, lease, or disposition of the property may result in the
13 loss of all or a portion of the property for low-income rental housing
14 use, the right of an incorporated tenant association in such housing,
15 the municipality, the local housing authority, or non-profit commu-
16 nity development corporations to negotiate for, acquire and operate
17 such property on substantially equivalent terms and conditions as
18 offered or available to a bona fide third party purchaser.

1 SECTION 5. To the extent not preempted by federal law or
2 section 6 of chapter 708 of the acts of nineteen hundred and sixty-
3 six, a municipality accepting the provisions of this act shall require
4 an owner of governmentally-involved housing or formerly govern-
5 mentally-involved housing, to affirmatively seek and accept any
6 prospective government housing resources, whether tenant-based or
7 project-based, which maximize affordability of the housing accom-
8 modations consistent with the income character of the property and

9 the owner's right to obtain a fair net operating income for the
10 housing accommodations. The appropriate state and municipal agen-
11 cies shall assist owners by identifying government housing
12 resources.

1 SECTION 6. To the extent not preempted by federal law or
2 section 6 of chapter 708 of the acts of 1966, and, so long as such
3 regulation is consistent with the owner's right to obtain a fair net
4 operating income and the municipality's housing policy, a munici-
5 pality accepting the provisions of this act shall establish local prefer-
6 ences, priorities, and income limits for admission to
7 governmentally-involved housing or formerly governmentally-
8 involved housing upon unit turnover. No ordinance, by-law, or regu-
9 lation shall require an owner to create a tenancy involving any
10 person with a history of conduct which would, if repeated, be
11 grounds for eviction from such housing.

1 SECTION 7. A municipality accepting the provisions of this act
2 may promulgate such by-laws, ordinances, rules, regulations, and
3 orders as it may deem necessary to effectuate the purposes hereof
4 and may grant exemptions and exceptions thereto when such action
5 would tend to maintain or increase the supply of affordable housing
6 in the municipality, including, without limitation, to promote the sale
7 of the property to a bona fide tenant organization or non-profit com-
8 munity development corporation under terms and conditions which
9 would tend to maintain the income character of the property.

1 SECTION 8. Any hearings regarding matters related to regulation
2 of rents or removal permits for governmentally-involved housing or
3 formerly governmentally-involved housing or regarding compliance
4 with other provisions of this act, or any ordinance, by-law, rule, or
5 regulation adopted hereunder, shall be conducted by the municipality
6 or its designee in accordance with the provisions of section 11 of
7 chapter 30A of the General Laws except that the requirements of
8 paragraphs (7) and (8) of said section 11 shall not apply to such
9 hearings.

1 SECTION 9. All decisions of the municipality or its designee
2 may be appealed to the Housing Court if available, the District

3 Court, or the Superior Court in the jurisdiction or county where the
4 municipality is located by any person aggrieved thereby, whether or
5 not previously a party in the matter, within thirty calendar days after
6 receipt of notice of such decision. Judicial review of adjudicatory
7 decisions shall be conducted in accordance with section 14 of
8 chapter 30A of the General Laws. Judicial review of regulations
9 shall be conducted in accordance with section 7 of chapter 30A of
10 the General Laws. The housing, district, and superior courts shall
11 have jurisdiction to enforce the provisions hereof and any ordinance,
12 by-law, rule, or regulation adopted hereunder and, on application of
13 the municipality or its designee or any aggrieved person, may
14 restrain or enjoin violations of any such ordinance, by-law, rule, or
15 regulation. In the interests of justice, the court may allow any neces-
16 sary parties to be joined in or to intervene in any action brought
17 hereunder and may in its discretion allow or require an action to pro-
18 ceed as a class action.

1 SECTION 10. It shall be unlawful for any person to do or omit to
2 do any action in violation of this act or any order, ordinance, by-law,
3 rule or regulation adopted or promulgated hereunder. Whoever will-
4 fully violates any provision of this act or any order, ordinance, by-
5 law, rule, or regulation adopted or promulgated hereunder or
6 whoever makes a false statement in any testimony before the munic-
7 ipality or its designee, or whoever knowingly supplies the munici-
8 pality or its designee with false information, in connection with a
9 proceeding under this act, shall be punished by a fine of not more
10 than four hundred dollars or by imprisonment for not more than
11 ninety days, or both; provided, however, that in the case of a second
12 or subsequent offense, or where the violation continues after notice
13 thereof, such person shall be punished by a fine of not more than
14 two thousand dollars, or imprisonment for not more than one year, or
15 both.

1 SECTION 11. The provisions of this act are severable, and if any
2 of its provisions shall be held unconstitutional or otherwise invalid
3 by any court of competent jurisdiction, the decision of such court
4 shall not affect or impair any of the remaining provisions.

1 SECTION 12. This act shall be submitted to the voters of a city or
2 town by a vote of the city council, town council or board of
3 selectman in the form of the following question which shall be
4 placed upon the official ballot of a regular election “Shall an act
5 passed by the general court, entitled ‘An Act authorizing localities to
6 adopt protections for low and moderate income tenants and units of
7 governmentally-involved housing,’ be accepted?” If a majority of
8 the votes in answer to said question is in the affirmative, this act
9 shall take full effect in such city or town.